

STRAIGHT TALK ON COVID VACCINATIONS: WHAT CLIENTS NEED TO KNOW

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STATE OF THE VACCINE

- FDA approved Pfizer BioNTech and Moderna COVID-19 vaccines in late 2020, and the Johnson & Johnson vaccine on February 27, 2021
- Approved for distribution to the public under the FDA's Emergency Use Authorization ("EUA") procedures
 - Can be revoked at any time if safety issues arise or data supports reduced efficacy
- Approved for use for the duration of the COVID-19 public health emergency

DISTRIBUTION AND ADMINISTRATION

- Doses were allocated to states by the federal government based on a needs assessment
- Guidance and action plans vary by jurisdiction and are evolving
- Kansas and Missouri have a tiered priority system
- Generally healthcare providers, long-term care residents and patients, and essential workers have first access opportunity

Kansas Vaccination Phases | By Population

Phase

1

2

3

4

5

Population

- Healthcare workers
- Residents or patients in Long-term care (LTC), senior housing or LTC-supported independent living
- Workers critical to pandemic response continuity

- Persons Aged 65+
- Congregate settings
- High-contact critical workers
- All unvaccinated persons prioritized in previous phases

- Aged 16-64 with severe medical risks
- Other critical workers
- All unvaccinated persons prioritized in previous phases

- Aged 16-64 with other medical risks
- All unvaccinated persons prioritized in previous phases

- Rest of pop. 16+
- Children*
- All unvaccinated persons prioritized in previous phases

Late January

March

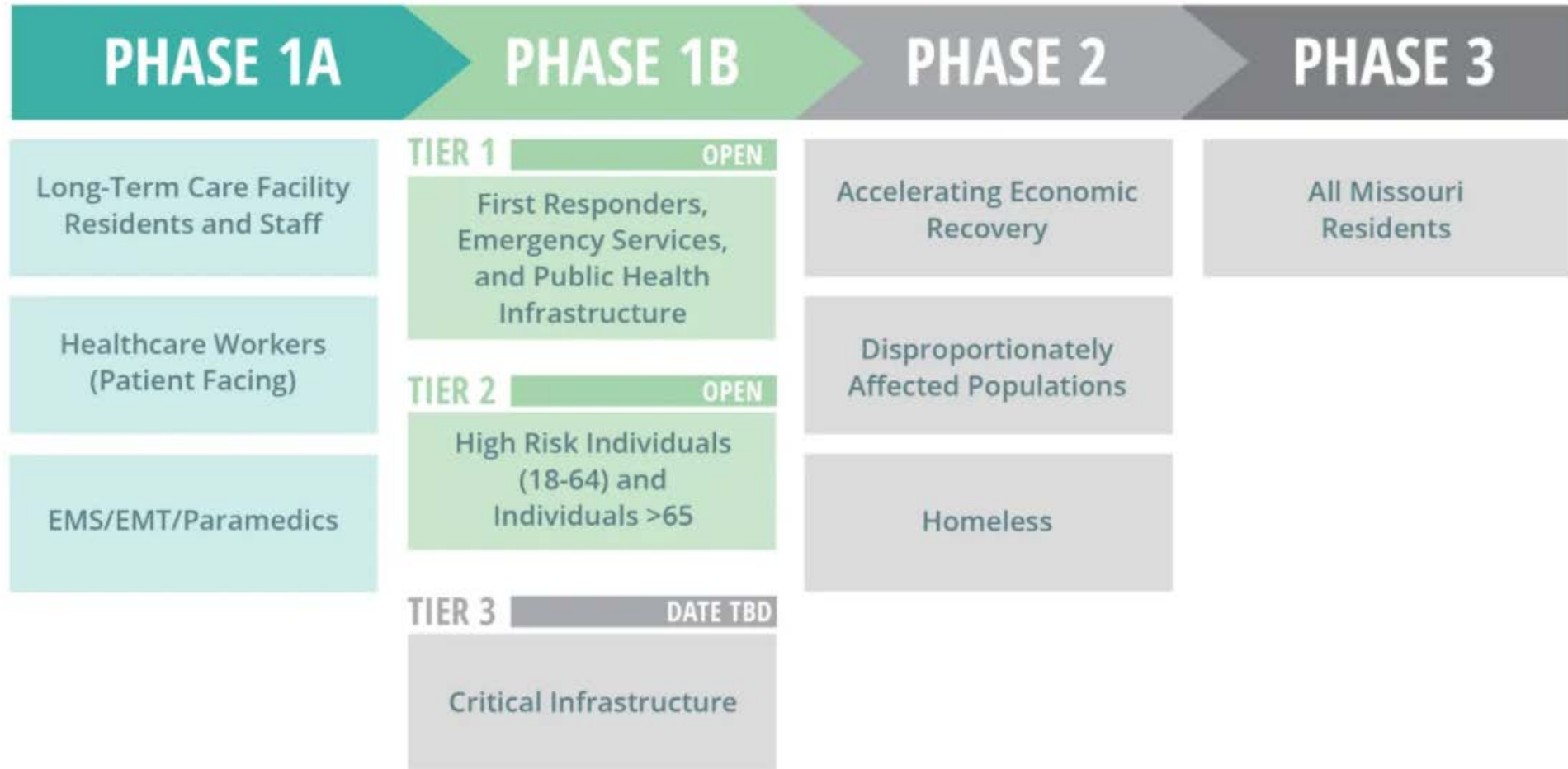
Late April
- Mid May

June

*Subject to further research on Vaccine risks and effectiveness for children; Note: Dates of phases are dependent upon vaccine supply.



MISSOURI'S COVID-19 VACCINE PLAN



PUBLIC RESPONSE TO COVID-19 VACCINE

- MIXED

- Recent polls show between 60% and 70% of the public is willing to get vaccinated (Pew Research Center, Kaiser Family Foundation, SHRM)
- Of the people who are very resistant to being vaccinated, some would reconsider if their employer required vaccination, but some would not
- Acceptance seems to be growing as more people are vaccinated and incentives would persuade some employees to get vaccinated

ADDITIONAL SURVEY FINDINGS

- A recent SHRM survey found 33% of Americans believe the COVID vaccine should be mandatory for everyone who is able to receive it
- The same SHRM survey found 28% of employed Americans would not get vaccinated if employer required it, even if it meant risking termination
- Littler survey of in-house lawyers, HR professionals and executives found:
 - Less than 1% currently mandate vaccination for all employees
 - 6% say they will mandate vaccinations once vaccines readily available
 - 48% have decided they will not mandate vaccinations; 43% are undecided
 - 57% question the effectiveness of mandate given potential exemptions

EMPLOYER LIABILITY CONSIDERATIONS

- No broad liability shield from Congress as part of COVID relief packages
- Existing FDA law may shield some employers who administer vaccines or provide facilities for vaccine administration from tort actions brought by employees receiving the vaccine
 - Requires compliance with EUA – informed consent and receipt of patient fact sheet

COMMON EMPLOYEE OBJECTIONS

- Personal choice
- Political beliefs
- Fear of adverse reactions
- Religious objections
- Mistrust of science
- Pseudoscience rumors

EMPLOYERS' OPTIONS

- “No policy” policy
- Mandatory vaccination
- Voluntary, but recommend vaccination

DECISION PROCESS

Selection of which option requires an assessment

- Network within your industry – what are your counterparts doing?
- Survey your employees – anonymously
 - Plans to get vaccinated
 - Possible objections or need for accommodation
 - Identify incentives that would be attractive to vaccination
- Get input from key stakeholders – operations, finance, legal, human resources, etc.
- Advice from human resources consultants
- Advice from legal counsel

THE “NO POLICY” POLICY

- Employers can choose to not have a policy and leave the decision up to the employee and their healthcare provider
- Even with a “no-policy” policy, employers still have a duty under OSHA to provide a safe work environment
- Continue to follow interim guidance on COVID-19 that OSHA published during the pandemic, which will likely be updated
 - <https://www.osha.gov/coronavirus>
- We expect OSHA will publish guidance on vaccinations

MANDATORY VACCINATION POLICY

- Employers CAN make COVID-19 vaccination a condition of employment
 - Can we fire an employee for refusing to get vaccinated? Short answer is a qualified YES subject to exceptions & limitations
 - Can we only require certain segments to get vaccinated? Yes
- Several legal risks & potential exceptions to answer above
 - Workplace safety & Potential National Labor Relations Act issues
 - Title VII – sincerely held religious objection
 - Requires accommodation
 - ADA – contraindications to vaccination as a disability
 - Requires accommodation

WORKPLACE SAFETY RISKS

- OSHA – no retaliation where employee objects due to reasonable belief vaccine creates a real danger of serious illness or death
- OSHA – Injuries from adverse vaccine effects
 - Recordation
 - Could be a work-related illness.
 - Need to log the injury on OSHA Forms 300 and 301
 - Reporting
 - Employee injury requiring hospitalization within 24 hours of vaccination – 24 hours to report
 - Employee death within 30 days of vaccination – 8 hours to report
- Injuries from adverse vaccine effects – workers' compensation
 - Could also implicate workers' compensation benefits

TITLE VII – RELIGIOUS BELIEF

- Mandatory vaccination policies must accommodate employees' "sincerely held religious belief" against vaccination
- "Sincerely held"
 - If employer has objective basis to question, use EEOC four-factor test
- "Religious belief"
 - Religion versus moral/ethical beliefs
- Employer can ask employee to identify the religious belief and how/why that belief is negatively impacted by the vaccine
- Accommodation required, unless exemption creates undue hardship

ADA VACCINE ISSUES

- Reasonable accommodation is required under a mandatory vaccination policy, unless accommodation causes **undue hardship** or **direct threat**.
- Employers can request documentation for need for accommodation from healthcare provider.
- Follow normal interactive process to reach a reasonable accommodation.

EXAMPLES OF ACCOMMODATIONS

- Remote work
- PPE at all times
- Protective panels/shields or other physical barrier
- Mandating social distancing
- Physically segregating employee from others
- Leave of absence
- Resource: <https://askjan.org/topics/COVID-19.cfm>

VOLUNTARY VACCINATION POLICY

- EEOC guidance states preference for voluntary policy
- How can employers encourage vaccination, which CDC recommends?
- Implement an employee communication and education strategy
 - Be consistent with CDC and other public health agencies
 - Host virtual “town halls” about the decision
 - Educate employees on safety and efficacy
 - Educate employees on benefit to company and community
 - Provide resources on availability of vaccines & how to sign up
 - Have a single source of information – Intranet, SharePoint, etc.
 - Senior management takes the vaccine

VOLUNTARY VACCINATION POLICY

- Employers can offer incentives to get vaccinated. Examples:
 - Gift cards or cash payments or swag
 - PTO to get vaccinated
 - Automatic PTO after vaccination if employee suffers adverse reaction
 - Drawing for prizes
 - Promise of group outing
- Hurdles: Possible disparate impact on ineligible employees, administration of incentive program, potential violation of EEOC's proposed wellness regulations

WHAT ARE OTHER EMPLOYERS PLANNING TO DO PER LITTLER SURVEY?

- 87% providing information on benefits of vaccination and how to get vaccinated
- 37% offer vaccine administration on-site if allowed
- 33% paid time off to receive vaccine & recover from side effects
- 12% ban unvaccinated employees from certain activities (*e.g.*, interacting with co-workers or customers)
- 11% cash awards to employees who receive vaccine
- 6% do not plan to encourage employees to get vaccinated

KC METRO VACCINATION SOURCES

- KC Metro counties and municipalities
 - [Covid Vaccine | Map \(mo.gov\)](#)
 - [COVID-19 in Kansas City: Where to get a coronavirus vaccine in the metro \(fox4kc.com\)](#)
 - [COVID-19 Vaccine in Johnson County and vaccination information \(johnsoncountyhealth.org\)](#)
 - [Johnson County, Kansas Phase 2 COVID-19 Vaccine Interest Form \(jocogov.org\)](#)

KC METRO VACCINATION SOURCES, CONT'D

- KC Metro counties and municipalities
 - [Wyandotte County COVID-19 Vaccination Interest Form \(openforms.com\)](#)
 - [Cass County Health Department \(civicplus.com\)](#)
 - [COVID-19 Vaccine | Clay County PHC, MO \(clayhealth.com\)](#)
 - [COVID-19 Vaccine - Platte County Health Department \(municipalonline.com\)](#)
 - [Clinton County Health Department – Health Families, Healthy Communities \(clintoncohealth.org\)](#)

OTHER CONSIDERATIONS

- Who pays for the vaccination?
- Wage & hour issues
 - Mandatory policy: Employees must be paid for time spent getting vaccinated
 - Voluntary policy: Consider paying employee for time spent getting vaccinated
- Unionized employees
 - Employers will need to bargain with union regarding implementation of vaccine policy and possible effects of decision on employees
 - Consult with labor counsel
- Temporary employees
- Be flexible!

LINKS TO OTHER RESOURCES

- www.shrm.org/hr-today/news/hr-news/Pages/COVID-19-Vaccination-Resources.aspx
- [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws | U.S. Equal Employment Opportunity Commission \(eeoc.gov\)](#) – Review Section K -- ADA and Vaccinations
- [KDHE Vaccine KS | Official Website \(kansasvaccine.gov\)](http://kansasvaccine.gov)
- [Answering Patients' Questions about COVID-19 Vaccination | CDC](#)

LINKS TO OTHER RESOURCES CONT'D

- [Effective COVID-19 Vaccine Conversations with Patients | CDC](#)
- <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/toolkits/essential-workers.html>
- [AHA, AMA and ANA Urge Health Care Professionals to Take COVID-19 Vaccine | AHA](#)
- [Answering health professionals' COVID-19 vaccination questions | American Medical Association \(ama-assn.org\)](#)
- [Seigfreid Bingham COVID-19 Resources - Seigfreid Bingham \(sb-kc.com\)](#)

QUESTIONS AND REAL-WORLD SITUATIONS





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